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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Interconnection and Resale	)	CC Docket No. 94-54
Obligations Pertaining to	)	
Commercial Mobile Radio Services	)	

To: The Commission

REPLY COMMENTS

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.
BELLSOUTH CELLULAR CORP.

William B. Barfield
Jim O. Llewellyn
1155 Peachtree Street, N.E.
Suite 1800
Atlanta, GA 30309-2641
(404) 249-4445

Charles P. Featherstun
David G. Richards
1133 21st Street, N.W.
Washington, D.C. 20036
(202) 463-4132

Their Attorneys

July 14, 1995

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REPLY COMMENTS OF BELLSOUTH

BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Cellular Corp. (collectively "BellSouth"), by their attorneys, hereby reply to comments submitted in response to the Commission's *Second Notice of Proposed Rule Making*, FCC 95-149 (Apr. 20, 1995), *summarized*, 60 Fed. Reg. 20949 (Apr. 28, 1995) ("*SNPRM*") in this docket.

SUMMARY

In its *SNPRM*, the Commission proposed to extend cellular resale obligations to all CMRS providers, rejected the proposal to require switch-based resale, and indicated that the marketplace, rather than government regulation, should determine CMRS-to-CMRS interconnection and roaming obligations. BellSouth generally supports the Commission's tentative determinations.

BellSouth concurs with a number of parties that regulatory parity requires that the cellular resale obligation be extended to similarly-situated competitors. Specifically, all broadband CMRS providers should be subject to the same resale obligations. BellSouth also agrees with the majority of commenters that the Commission should forbear from imposing CMRS-to-CMRS interconnection and roaming obligations. In the competitive CMRS market, government intervention should not be necessary.

Finally, the Commission has initiated a proceeding regarding number portability for all services. Accordingly, rather than address number portability in the context of CMRS services only, BellSouth urges the Commission to defer resolution of this issue to the new rulemaking.

I. Resale Issues

A. Resale Obligations Should Be Identical For All Broadband CMRS Providers

BellSouth continues to believe that the same resale obligations imposed on cellular carriers should be extended to all broadband CMRS providers.[1] Section 332 of the Communications Act provides for regulatory parity among similar mobile services.[2] The Commission has found all broadband CMRS services -- cellular, PCS, and enhanced specialized mobile radio ("ESMR") -- to be similar.[3]

Despite this similarity, various specialized mobile radio ("SMR") and ESMR providers oppose the imposition of resale requirements because of "unique" burdens that will be imposed on their systems.[4] Given the Commission's determination that these services are comparable to other broadband CMRS, however, regulatory parity requires that resale obligations also be extended to them. Resale requirements should be applied uniformly to all broadband CMRS providers. BellSouth concurs with AirTouch Communications, Inc. ("AirTouch") that, in light of "the regulatory parity provisions mandated by the Communications Act[,] . . . [n]o justifica-

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1 *See* BellSouth Comments at 7.

2 H.R. Rep. No. 103-111, 103d Cong., 1st Sess. 259 (1993).

3 *Implementation of Sections 3(n) and 332 of the Communications Act,* GN Docket No. 93-252, *Third Report and Order*, 9 FCC Rcd. 7988, 7996 (1994).

4 *See* Nextel Communications, Inc. ("Nextel") Comments at 13-15; American Mobile Telecommunications Association ("AMTA") Comments at 9-14; Southern Company Comments at 3-9.

tion exists for exempting the high capacity digital networks of emerging CMRS providers from the basic prohibition against resale restrictions imposed upon carriers today."[5]

Similarly, BellSouth opposes the requests of American Personal Communications ("APC") and the Personal Communications Industry Association ("PCIA") that PCS licensees be exempt from any resale obligations during their first year of operations.[6] As stated above, regulatory parity requires that PCS licensees be subject to the same regulatory obligations as other broadband CMRS providers. Further, if PCS licensees are allowed to prohibit resale during their first year of operations, Bell Companies would be virtually eliminated from the wireless resale market because BOCs are currently prohibited from reselling cellular service except through a separate subsidiary. Thus, BOCs holding PCS licenses will be at a competitive disadvantage as they would be prohibited from reselling either wireless service while their PCS competitor can resell cellular service. Accordingly, the Commission should reject any request to provide PCS licensees with preferential resale treatment.

As in cellular, the Commission should not require CMRS providers to allow unlimited resale of their services by facilities-based competitors.[7] Most commenters agreed with BellSouth's position that CMRS providers should be required to allow facilities-based competitors to resell only during the competitor's "start-up" phase.[8] By limiting the resale obligation in

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5 AirTouch Comments at 15. *See* Rural Cellular Coalition ("RCC") Comments at 6-8; SNet Cellular, Inc. ("SNet") Comments at 13-14; Bell Atlantic Mobile Systems, Inc. ("BAMS") Comments at 9-12;

6 *See* APC Comments at 9-11; PCIA Comments at 20-21.

7 BellSouth Comments at 8-9.

8 BellSouth Comments at 8-9 (3 year start-up period); Comcast Comments at 27 (3 years); (continued...)

this manner, the Commission will "promote competition and investment in infrastructure" by facilities-based competitors.[9] BellSouth agrees with AirTouch that "[r]isky innovations and aggressive investments will not occur in this [CMRS] industry if license holders are merely allowed to 'piggy-back' on the infrastructure investments made by their competitors" by reselling their services.[10] Once a CMRS provider has an operational system, it should have to compete on a facilities basis. The availability of resale would give an inferior service provider a disincentive to invest in improved and expanded facilities, while at the same time preventing the superior service provider from differentiating its service as a competitive selling point. For example, one CMRS provider may cover only major population centers, while its competitor covers both major population centers and rural areas. If the first company can simply resell the other company's rural service, it can offer wide-area service without any additional investment, taking a free ride on its competitor's superior facilities. The company that spent the money to cover the larger area, on the other hand, is deprived of the ability to market its coverage as superior to its competitor's. In other words, resale by facilities-based competitors diminishes

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8 (...continued)
CTIA Comments at 25 (5 years); GTE Comments at 22-23 (maximum of 5 years); SNet Comments at 17 (18 months); AT&T Comments at 28 (18 months); Ameritech Comments at 7 (5 years); Frontier Cellular Holding Inc. ("Frontier") Comments at 7; PCS PRIMECO Comments at 10; Southwestern Bell Mobile Systems, Inc. ("SBMS") Comments at 18 (5 years); Rural Cellular Association ("RCA") Comments at 11-13 (5 years); RCC Comments at 7 (5 years); BAMS Comments at 11 (2 years); Sprint Telecommunications Venture ("Sprint") Comments at 10 (10 years); Western Wireless Corporation Comments at 5 (3-5 years).

9 AirTouch Comments at 16; *see* BellSouth Comments at 8-9.

10 AirTouch Comments at 17.

competition on the basis of quality, thereby lowering the quality of service, contrary to the public interest.

B. Unrestricted Resale is Not Required by the Communications Act

Contrary to the assertions of LDDS WorldCom ("LDDS"),[11] the unrestricted resale of wireless services is not required by the Communications Act. In fact, the Commission has found it necessary to conduct extensive proceedings, service-by-service, to determine whether the factual circumstances justify unrestricted resale. For many years, the Commission found that resale of common carrier services was generally contrary to the public interest.[12] More recently, the Commission has determined that restrictions on resale in certain services are unreasonably discriminatory, which is the standard set by Section 202(a) of the Act. For each type of service, the Commission must determine whether there is a valid reason for restricting resale. Thus, the imposition of a resale requirement stems from an analysis of the market for a particular class of service, not from a statutory mandate.

Restrictions on the resale of private line services were found unjustified in 1976; the Commission found that allowing resale would inject new competition which would force "carriers to provide their services at rates which are wholly related to costs." [13] In 1980, the Commission extended this policy to public switched message telephone service, once again to

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11 LDDS Comments at 6. LDDS does not reference any section of the Communications Act which requires common carriers to provide resale opportunities.

12 *See, e.g., Special Telephone Charges of Hotels*, 10 FCC 252, 262 (1943), *aff'd sub nom. Ambassador, Inc. v. United States*, 325 U.S. 317 (1945).

13 *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, Docket No. 20097, *Report and Order*, 60 FCC 2d 261, 298 (1976) (subsequent history omitted) ("*Resale and Shared Use*").

inject competition into a largely noncompetitive service.[14] In 1981, the FCC similarly required cellular carriers to allow unrestricted resale, principally because of its concern that AT&T would be the dominant provider of service.[15] It is noteworthy, however, that the Commission later allowed restrictions on cellular resale by facilities-based competitors[16] and has never ordered unrestricted resale of other wireless services.

As noted by many parties, cellular licensees were the only significant providers of commercial, interconnected two-way wireless service when they were subjected to resale obligations. Because there were only two cellular providers in each market, the Commission was concerned that they would be able to charge excessively high rates. Thus, the Commission required these licensees to allow resale of their service in the hope that resellers would emerge as alternatives to the two facilities-based carriers.[17]

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[14] *Resale and Shared Use of Public Switched Network Services*, 83 FCC 2d 167, 174-76 (1980), *recon. denied* 86 FCC 2d 820 (1981), *review denied sub nom. Southern Pacific Communications Corp. v. FCC*, 682 F.2d 232 (D.C. Cir. 1982).

[15] *Cellular Communications Systems*, CC Docket No. 79-318, *Report and Order*, 86 FCC 2d 469, 510-11 (1981), *recon.*, 89 FCC 2d 58, *further recon.* 90 FCC 2d 571 (1982), *petition for review dismissed sub nom. United States v. FCC*, No. 82-1526 (D.C. Cir. Mar. 3, 1983).

[16] *Proposed Changes to the Commission's Cellular Resale Policies*, 7 FCC Rcd. 4006, 4008-09 (1992), *aff'd sub nom. Cellnet Communications v. FCC*, 965 F.2d 1106 (D.C. Cir. 1992).

[17] *Cellular Communications Systems*, 86 FCC 2d at 511 (citing rationale from *Resale and Shared Use* decision as basis for the cellular resale obligation). The Commission has never required that common carriers offer bulk rates to resellers; it has only required common carriers to offer bulk rates to resellers *if bulk rates are offered to other subscribers*. In fact, when the Commission extended resale obligations to cellular, it was unsure whether a resale market would develop. *Id. Accord* RCC Comments at 6.

Since that time, however, the wireless marketplace has become increasingly competitive.[18] Commercial, interconnected two-way service is no longer available only from cellular licensees; service also may be obtained from ESMR providers, and the CMRS marketplace will become even more competitive with the commencement of PCS operations in the near future.[19] Once PCS systems are operational, there will be numerous CMRS licensees capable of providing wireless voice communications.[20] In such an environment, there may be sufficient competition to eliminate the need for resale competition.[21] At a minimum, resale obligations should be imposed uniformly on all broadband CMRS providers, consistent with the principle of regulatory parity.

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18 *Regulatory Treatment of Commercial Mobile Services*, GN Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd. 1411, 1468-69, 1472, 1499 (1994).

19 *Regulatory Treatment of Commercial Mobile Services*, GN Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd. 1411, 1468-69, 1472, 1499 (1994). Contrary to the assertions of Time Warner, it should not take years for PCS to become operational. Time Warner Comments at 2. The Commission has indicated that speed of deployment was a critical objective underlying its PCS policies. *See Amendment of the Commission's Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, *Second Report and Order*, 8 FCC Rcd. 7700, 7704 (1993). The staff has since described prompt deployment as "paramount." *Deferral of Licensing of MTA Commercial Broadband PCS*, GN Docket No. 93-253, *Order*, DA 95-806, at 3 (Apr. 12, 1995). Furthermore, the A and B block PCS licensees have paid billions of dollars for their licenses, ensuring that these systems will be deployed rapidly to earn a return on such a substantial investment.

20 There will be two cellular licensees, and as many as six broadband PCS licensees, in each market. In some cases, there may even be one or more ESMR licensees.

21 *See* Western Wireless Corporation Comments at 4-5.

C. A Resale Obligation Should Not be Imposed on Paging and Narrowband PCS Licensees

Although BellSouth believes that resale obligations should be imposed on all broadband CMRS licensees at this time, such obligations should not extend to paging, Narrowband PCS, or wireless data services. These services are not directly competitive with Broadband PCS services. Thus, regulatory parity does not require similar regulations for broadband CMRS on the one hand, and, paging, Narrowband PCS, and wireless data on the other.

The Commission has never imposed a resale requirement on paging licensees, and it is difficult to see how the public interest would be served by imposing mandatory resale obligations on such licensees. The highly competitive nature of the paging industry eliminates any need to encourage arbitrage. BellSouth agrees with PageNet's observation that given the competitive state of the paging industry, resale would serve none of the objectives for which resale requirements have traditionally been imposed in other services.[22]

D. The Commission Properly Rejected The Switch-Based Resale Proposal

BellSouth concurs with the Commission's tentative conclusion, as well as the majority of commenters addressing this question, that a switch-based resale requirement should not be

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[22] PageNet Comments at 3-6; *accord* Mobilemedia Communications, Inc. Comments at 2-7; AirTouch Comments at 18-19.

adopted.[23] The Commission correctly noted that such a requirement will impose unwarranted "costs on the Commission, the industry, and consumers."[24]

The National Wireless Resellers Association ("NWRA") asserts, however, that any restriction on switch-based resale violates the Communications Act.[25] NWRA further asserts that Section 332(c)(1)(B) and Section 201 of the Communications Act requires CMRS providers to provide interconnection to resellers if (1) the reseller's request is reasonable and (2) said interconnection would benefit the reseller without harming the public.[26] The Communications Act, however, does not mandate such a result. Section 201 permits the Commission to order common carriers to interconnect only if such interconnection "is necessary or desirable in the public interest."[27] The Commission has properly found that switch-based resale is not necessary and will create no public interest benefits that are not already present under the current resale requirements.[28]

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23 *See SNPRM* at ¶¶ 95-96; BellSouth Comments at 10-11; CTIA Comments at 27-40; GTE Comments at 24-26; RCC Comments at 8-10; BAMS Comments at 12; Pacific Telesis Mobile Services and Pacific Bell Mobile Systems ("PBMS") Comments at 10-11; Comcast Comments at 23, 27-30; Sprint Comments at 10-12; AT&T Comments at 28-31; PCIA Comments at 21-22; PCS PRIMECO Comments at 10-13; APC Comments at 10-12; New Par Comments at 24-27; Alltel Comments at 4-5; NYNEX Comments at 8-9; AirTouch Comments at 19-23; Frontier Comments at 8; Horizon Cellular Telephone Company ("Horizon") Comments at 4-5; SBMS Comments at 22.

24 *SNPRM* at ¶ 96; *see* CTIA Comments at 27.

25 NWRA Comments at 5-8; *see* General Service Administration Comments at 5-6.

26 NWRA Comments at 2.

27 47 U.S.C. § 201(a).

28 *See SNPRM* at ¶ 95.

Further, contrary to the assertions of NWRA and Time Warner,[29] switch-based resale may not be economically or technically feasible, and will not benefit consumers. Switch-based resale will not, as these parties suggest, be a straightforward adaptation of LEC-cellular interconnection principles. At a minimum, cellular licensees would have to unbundle their service into a variety of detailed service elements, hardly the simple matter NWRA and Time Warner assert. Moreover, the various switch-based resale models that have been proposed are untested and pose numerous technical challenges.[30] As AT&T pointed out,[31] the burdens that such a requirement would impose on licensees and consumers include:

- the development of operational software to implement the proposal;
- the development and implementation of signalling protocols that are capable of routing traffic to a resellers' switch to complete a call;
- preventing fraudulent calls over the reseller switch; and
- negotiation of additional roaming agreements to accommodate the resellers' customers.

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29 NWRA Comments at 8, 10-13; Time Warner Comments at 4-10; *see* Cellular Service, Inc. and Comtech Mobile Telephone Company Comments ("Joint Comments") at 9-12; National Wireless Resellers Association ("NWRA") Comments at 2-15; Connecticut Telephone and Communications Systems, Inc. Comments at 2-8; Telecommunications Resellers Association Comments at 23-24, 28-36.

Time Warner claims that there was no record support for the Commission's tentative determination that switch-based resale should not be required. In fact, there was no record justifying a switch-based resale requirement. In the absence of support for such a requirement, the Commission properly decided not to propose it. The proponents of switch-based resale have failed to carry the burden of establishing a record basis for such a policy. As AT&T points out, resellers rely on theoretical designs based on futuristic software developments rather than specific technical and engineering data. *See* AT&T Comments at 29.

30 *See* AT&T Comments at 29.

31 AT&T Comments at 29-30.

Switch-based resale also will diminish service quality by increasing call set-up times, depriving resellers' customers of the benefit of existing roaming agreements, and forcing calls to go through an additional transmission link. In most cases, the reseller switch would duplicate, and not replace, functions performed by the cellular licensee's switch. It provides subscribers with no new functionality or service, while adding costs and reducing efficiency.

In essence, the switch-based resale proposal is an attempt by resellers to create their own networks at the expense of incumbent licensees. As such, it resembles the local exchange collocation requirement that the D.C. Circuit found to be an unconstitutional taking of property.[32]

Moreover, the Communications Act does not require that all communications services be unbundled into discrete elements. At most, the Commission should require a licensee to unbundle its service only if it cannot be provided from another source.[33] If the service in question is available from multiple sources and unbundling makes economic sense for all parties, it will occur naturally in response to the demands of the marketplace.

Cellular licensees are required to offer resellers cellular service on the same terms and conditions as other similarly-situated customers. 47 U.S.C. § 202(a). Accordingly, if they do provide unbundled service, they must make it available to resellers. There is no absolute statutory obligation to unbundle, however, and if unbundled service is not offered, resellers have no right to this service at any price. If a reseller wants to create its own network, it may purchase a license and design its system in any manner it sees fit, rather than demand that another company redesign its network for the exclusive benefit of the reseller.

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32 *Bell Atlantic v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994).

33 *See* Sprint Comments at 11-12.

II. A Competitive CMRS Marketplace Eliminates the Need For Regulating CMRS-to-CMRS Interconnection

BellSouth concurs with the majority of commenters that market forces, rather than government regulation, should control CMRS-to-CMRS interconnection.[34] Nevertheless, a few commenters urge the Commission to adopt mandatory interconnection policies.[35] BellSouth submits that the Commission should forbear from any such regulation. No persuasive public interest justification has been advanced for mandating specific forms of interconnection.

For example, General Communications, Inc. ("GCI") requests that the Commission address the issue of transiting traffic.[36] It later indicates, however, that the relationship between carriers of transiting traffic should be governed by individualized negotiations rather than Commission regulations.[37] BellSouth agrees that the relationship between these carriers is best left to private negotiations. Thus, there is no need for the Commission to address this issue.

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[34] *See* Sprint Comments at 2-3; Western Wireless Corporation Comments at 2-3; SNet Comments at 6; Comcast Cellular Communications, Inc. Comments at 5, 10-15; Geotek Communications, Inc. at 2-3; SBMS Comments at 2-8; PCS PRIMECO, L.P. Comments at 5-7; AT&T Comments at 13-16; Frontier Comments at 3-5; New Par Comments at 2-8; WJG MariTEL Corp. Comments at 2-4; E.F. Johnson Company Comments at 3; Nextel Comments at 2-3; AMTA Comments at 3-4; NYNEX Comments at 4-6; Alltel Comments at 1-3; Horizon Comments at 1; AirTouch Comments at 2-9; Ameritech Comments at 3-5; BAMS Comments at 3-6; CTIA Comments at 3-13; GTE Comments at 4-5; General Service Administration Comments at 5.

[35] *See* GCI Comments at 4-5; Comcast Comments at 2-4.

[36] GCI Comments at 4-5. Transiting traffic refers to traffic carried by a company that neither initiates nor terminates a call; the company simply provides a link between the originating and terminating companies.

[37] GCI Comments at 4-5.

In addition, Comcast urges the Commission to adopt the "sender keep-all" approach to LEC-to-CMRS interconnection.[38] This proposal should be rejected as beyond the scope of the subject rule making, which only addresses CMRS-to-CMRS interconnection and CMRS resale obligations.[39] In any event, the Commission has acknowledged that the LEC-to-cellular interconnection model is working well and there are no pending interconnection complaints.[40] Accordingly, the Commission should not change current regulations governing such interconnection obligations.

III. Roaming Requirements Should Not Be Adopted

BellSouth concurs with those parties stating that roaming standards and requirements are not necessary at this time.[41] As Bell Atlantic Mobile Systems notes, there is "no evidence of

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38 Comcast Comments at 2-4.

39 *See SNPRM* at ¶ 1. Comcast originally proposed this interconnection model in response to the original *Notice of Proposed Rule Making* in this proceeding which dealt with LEC-to-CMRS interconnection. Similarly, APC's proposal that LEC-CMRS interconnection costs be limited to transport costs only is also beyond the scope of this proceeding. APC Comments at 4.

40 *See Eligibility for the Specialized Mobile Radio Services*, GN Docket No. 94-90, *Report and Order*, 77 Rad. Reg. (P&F) 2d 431, ¶¶ 9, 22-24 (Mar. 7, 1995) ("*SMR Order*"); *see also Louisiana Public Service Commission*, PR Docket 94-107, *Report and Order*, FCC 95-191 at ¶¶ 7, 40 (May 19, 1995); *Arizona State Corporate Commission*, PR Docket 94-104, *Report and Order and Order on Reconsideration*, FCC 95-190 at ¶¶ 7, 36, 56 (May 19, 1995); *State of Ohio*, PR Docket 94-109, *Report and Order*, FCC 95-193 at ¶¶ 7, 37-38 (May 19, 1995); *People of the State of California*, PR Docket 94-105, *Report and Order*, FCC 95-195 at ¶¶ 3, 96 (May 19, 1995).

41 BAMS Comments at 8-9; RCC Comments at 4-6; Ameritech Comments at 5-6; SBMS Comments at 13-18; Frontier Cellular Comments at 5-6; AirTouch Comments at 10-14; NYNEX Comments at 6-8; Alltel Comments at 3; PCS PRIMECO Comments at 9; New Par Comments at 20-22; PCIA Comments at 7-9; AT&T Comments at 23-24; Nextel Comments at 5; AMTA Comments at 6; Frontier Comments at 5-6; Western Wireless

(continued...)

refusals to enter into roaming agreements. To the contrary, carriers demonstrate that it is in their economic interest to enter into roaming agreements."[42] Furthermore, cellular roaming rates are steadily declining without government intervention. Thus, there is no reason for government regulation of CMRS roaming arrangements.

Adoption of roaming requirements and specifications will hamper the rapid development of CMRS roaming capabilities. Because many commercial mobile radio services are in their nascency, any regulations that are adopted today will soon be outdated and likely will not anticipate future technological breakthroughs. The adoption of mandatory roaming requirements thus may impede the development and deployment of new technologies. The better course would be to refrain from adopting regulations, unless and until the marketplace proves to be ineffective at facilitating CMRS roaming.

Accordingly, BellSouth opposes any proposal that would mandate CMRS-to-CMRS roaming at this time.[43] PBMS mentions problem areas that it asserts may develop if CMRS-to-CMRS roaming is not mandated.[44] There is no evidence, however, that any of these will actually come to pass. In the absence of any evidence that market failure is likely, there is no need for adopting roaming requirements. If it eventually becomes clear that the marketplace cannot

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41 (...continued)
Corporation Comments at 6-7; GTE Comments at 12-14; RCA Comments at 7; CTIA Comments at 19-22.

42 BAMS Comments at 8.

43 *See* PBMS Comments at 3-7.

44 Unless roaming is mandated, PBMS claims that PCS providers will only be able to offer "island" service because cellular licensees will block roaming service. *See* PBMS Comments at 4-7.

facilitate CMRS-to-CMRS roaming, the Commission may initiate a rule making to address the problem. The Commission should rely in the first instance, however, on the marketplace before resorting to government regulation.

Contrary to the assertion of PBMS,[45] a cellular provider has an economic incentive to enter into a roaming agreement with an out-of-market PCS provider both because the cellular provider is not in direct competition with such a provider and because it will receive additional revenue from such an arrangement. It is unlikely that cellular carriers will fail to enter into roaming arrangements with PCS providers because of a headstart advantage. First, there is no "out-of-market" headstart that cellular providers will preserve. Second, with regard to the in-market headstart that cellular providers may have, a resale requirement (until PCS operations begin) will be sufficient to alleviate any such competitive edge.

BellSouth also disagrees with APC's assertion that roaming is a common carrier service which is therefore subject to non-discrimination requirements.[46] Roaming is not a service *per se*. It is merely a billing arrangement provided by cellular carriers to cellular subscribers they are obliged to serve. It is the underlying CMRS service, and not the roaming arrangement, that may be characterized as a common carrier service. Thus, there is no non-discrimination requirement applicable to roaming.[47]

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45 PBMS Comments at 4-6.

46 APC Comments at 7-8.

47 Even if roaming were a common carrier "service," cellular carriers would be permitted to treat customers who are not similarly-situated differently. Cellular subscribers and non-subscribers are not similarly-situated. Thus, a cellular carrier would be entitled, under Section 202(a), to draw reasonable distinctions between them in the provision of roaming service.

The Commission has never indicated that any particular form of roaming must be provided; only that *cellular subscribers, including roamers,* must be able to receive cellular service in any market. Further, the Commission has never prescribed the nature of the rates charged for roaming services. Automatic roaming requires switch programming, developing billing arrangements, and other technical and administrative tasks which vary between carriers. Thus, there may be one price for automatic roaming by a company's own subscribers from another market, another price for automatic roaming by subscribers from an affiliated system, and yet another price for automatic roaming by non-affiliate subscribers. These different subscribers are not similarly situated, due to the differing costs involved in their roaming such as risk of nonpayment, time required for reimbursement, collection costs, and the costs of administering roaming for same-company, affiliate, and non-affiliate customers. Thus, roaming rates are based largely on the relationship of the carriers.

IV. Number Portability Should Be Addressed in Another Proceeding

Some commenters urge the Commission to require number portability between CMRS providers.[48] This is obviously a highly complex issue and, based on the experience with 800 number portability, local number portability (including CMRS) will be even more complex. BellSouth agrees with CTIA that issues of number portability should be addressed on a broader scale.[49] Rather than adopt piecemeal regulations governing number portability, the Commission

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[48] NWRA Comments at 17-19; American Tel Group Comments at 1; MobileOne Comments at 1-2.

[49] CTIA Comments at 25-26; *see* SNet Comments at 18-19.

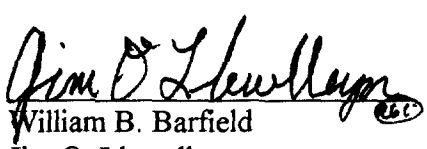
should address this question in its recently announced *Notice of Proposed Rule Making* on number portability.[50]

CONCLUSION

For the forgoing reasons, BellSouth supports (1) the extension of resale obligations to all broadband CMRS providers, (2) the rejection of the switch-based resale concept, and (3) the Commission's tentative decision to forbear from imposing CMRS-to-CMRS roaming and interconnection obligations. BellSouth also urges the Commission to defer issues relating to number portability to its newly initiated proceeding of broader applicability.

Respectfully submitted,

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.
BELLSOUTH CELLULAR CORP.

By: 
William B. Barfield
Jim O. Llewellyn

1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3610
(404) 249-4445

By: 
Charles P. Featherstun
David G. Richards

1133 21st Street, N.W., Suite 900
Washington, D.C. 20036
(202) 463-4132

Their Attorneys

July 14, 1995

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[50] *See* "Commission Seeks Comment on Telephone Number Portability," FCC News, Report No. DC 95-__ (rel. July 13, 1995).

CERTIFICATE OF SERVICE

I, Donna M. Crichlow, hereby certify that on this 14th day of July, 1995, a copy of the foregoing "Reply Comments" was served by first-class, United States Mail, postage prepaid, to the following:

* Chairman Reed Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

* Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

* Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

* Commissioner Rachelle Chong
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

* Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

* Rosalind K. Allen, Chief
Land Mobile and Microwave Division
Federal Communications Commission
2025 M Street, N.W., Room 5205
Washington, D.C. 20554

* John Cimko, Jr.
Chief, Policy Division
Federal Communications Commission
1919 M Street, N.W., Room 644
Washington, D.C. 20554

* Gerald P. Vaughan
Deputy Chief
Wireless Telecommunications Bureau
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

* Regina Keeney, Chief
Wireless Telecommunications Bureau
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

* David Furth
Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5202
Washington, D.C. 20554

* Robert H. McNamara
Private Radio Division
Federal Communications Commission
2025 M Street, N.W., Room 5322
Washington, D.C. 20554

Christopher Johnson
Western Wireless Corporation
330 - 120th Avenue, N.E., #200
Bellevue, WA 98005

Caressa D. Bennett
Dorothy E. Cukier
Law Offices of Caressa D. Bennett
1831 Ontario Place, N.W.
Suite 200
Washington, D.C. 20009

John T. Scott, III
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Michael F. Altschul
Randall S. Coleman
Andrea D. Williams
Cellular Telecommunications Industry
Association
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036

Philip L. Verveer
Jennifer A. Donaldson
Willkie Farr & Gallagher
1155 21st Street, N.W.
Suite 200
Washington, D.C. 20036-3384

Andre J. Lachance
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Carole C. Harris
Christine M. Gill
Tamara Y. Davis
Keller and Heckman
1001 G Street, N.W., Suite 500 West
Washington, D.C. 20001

Charles C. Hunter
Kelvin S. DiLallo
Hunter & Mow, P.C.
1620 I Street, N.W., Suite 701
Washington, D.C. 20006

Roger Miller
Mobile One Cellular and Paging Network
501 East Oakland Park Boulevard
Ft. Lauderdale, FL 33334

Andrew Molasky
Pacific Properties
3111 South Maryland Parkway
Las Vegas, NV 89109

David Walker
American Tel Group
5850 Eubank N.E., Suite B16
Albuquerque, NM 87111

Douglas L. Povich
W. Ashby Beal, Jr.
Kelly & Povich, P.C.
1101 30th Street, N.W.
Suite 300
Washington, D.C. 20007

Pamela J. Riley
AirTouch Communications
One California Street
San Francisco, CA 94111

David A. Gross
Kathleen Q. Abernathy
AirTouch Communications
1818 N Street, N.W., Suite 800
Washington, D.C. 20036

James F. Rogers
James H. Barker
Latham & Watkins
1000 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004-2505

Michael J. Shortley, III
180 South Clinton Avenue
Rochester, NY 14646

Alan R. Shark
Jill M. Lyon
American Mobile Telecommunications
Association, Inc.
1150 18th Street, N.W., Suite 250
Washington, D.C. 20036

Elizabeth R. Sachs
Lukas, McGowan, Nace & Guiterrez
1111 19th Street, N.W., 12th Floor
Washington, D.C. 20036

Robert S. Foosaner
Lawrence R. Krevor
Laura L. Holloway
Nextel Communications, Inc.
800 Connecticut Avenue, N.W.
Suite 1001
Washington, D.C. 20006

Joel H. Levy
Cohn & Marks
1333 New Hampshire Avenue, N.W.
Suite 600
Washington, D.C. 20036-1573

Emily C. Hewitt
Vincent L. Crivella
Michael J. Ettner
Jody B. Burton
General Services Administration
18th & F Streets., N.W., Room 4002
Washington, D.C. 20405

William B. Wilhelm, Jr.
Cohn & Marks
1333 New Hampshire Avenue, N.W.
Suite 600
Washington, D.C. 20036

Lewis J. Paper
David B. Jeppsen
Keck, Mahin & Cate
1201 New York Avenue, N.W.
Washington, D.C. 20005-3919

Gene P. Belardi
MobileMedia Communications, Inc.
2101 Wilson Boulevard, Suite 935
Arlington, VA 22201

Judith St. Ledger-Roty
John W. Hunter
Reed, Smith, Shaw & McClay
1200 18th Street, N.W.
Washington, D.C. 20036

Joel H. Levy
A. Sheba Chacko
Cohn & Marks
1333 New Hampshire Avenue, N.W.
Suite 600
Washington, D.C. 20036-1573

Susan H.R. Jones
Russell H. Fox
Lauren S. Drake
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005

Richard Rubin
Steven N. Teplitz
Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Washington, D.C. 20036